

1 AVISO LEGAL GROUP, LLP  
LINDA D. LAM, SBN 229780  
2 llam@avisolegalgroup.com  
LORI GINEX-ORINION, SBN 223954  
3 lgo@avisolegalgroup.com  
4000 Barranca Parkway, Suite 250  
4 Irvine, California 92604  
Telephone: 949.262.3272  
5 Facsimile: 949.271.4037

6 Attorneys for Plaintiffs  
GENOVA CAPITAL, INC. and  
7 WARMBLOOD, INC.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF LOS ANGELES

10 GENOVA CAPITAL, INC., a California  
Corporation; and WARMBLOOD, INC., a  
11 California Corporation;

12 Plaintiffs,

13 v.

14 COLETTE PELISSIER aka COLETTE  
PELISSIER FIELD, an individual; BRIGHAM  
15 FIELD, an individual; MALIBU MEDIA,  
LLC, a California limited liability company;  
16 CLICK HERE LLC, a California limited  
liability company; COLETTE HOLDINGS,  
17 LLC, a California limited liability company;  
COLETTE PROPERTIES, LLC, a California  
18 limited liability company; COLETTE  
PRODUCTION, INC., a California  
19 corporation; COLETTE PRODUCTIONS  
LLC, a business entity form unknown; ZO  
20 DIGITAL, LLC, a California limited liability  
company; and Does 1 to 25,

21 Defendants.  
22

CASE NO.

**UNLIMITED CIVIL JURISDICTION**

**COMPLAINT FOR:**

- (1) **BREACH OF ORAL CONTRACT; AND**  
(2) **BREACH OF WRITTEN CONTRACT**

**JURY TRIAL DEMANDED**

1 GENOVA CAPITAL, INC., a California corporation ("**Genova**"); and WARMBLOOD,  
2 INC., a California corporation ("**Warmblood**") (collectively, "**Plaintiffs**") allege against Defendants  
3 COLETTE PELISSIER aka COLETTE PELISSIER FIELD ("**Pelissier**"); BRIGHAM FIELD  
4 ("**Field**"); MALIBU MEDIA, LLC ("**Malibu Media**"), a California limited liability company; CLICK  
5 HERE LLC ("**Click Here**"), a California limited liability company; COLETTE HOLDINGS, LLC  
6 ("**Colette Holdings**"), a California limited liability company; COLETTE PROPERTIES, LLC  
7 ("**Colette Properties**"), a California limited liability company; COLETTE PRODUCTION, INC.  
8 ("**Colette Production, Inc.**"), a California corporation; COLETTE PRODUCTIONS LLC ("**Colette**  
9 **Productions LLC**"), a business entity form unknown; and ZO DIGITAL, LLC ("**Zo Digital**"), a  
10 California limited liability company; and Does 1 to 25, inclusive (collectively, "**Defendants**") as  
11 follows:

#### 12 **I. NATURE OF THE ACTION**

13 1. Over the last two-and-a-half years, Plaintiffs and Defendants have entered into a  
14 number of oral and written agreements regarding money that Plaintiffs either: (1) loaned to  
15 Defendants via promissory notes secured with deeds of trust on certain real property owned by  
16 Defendants; (2) invested in exchange for a 50% interest in copyrights owned by Defendant Malibu  
17 Media (the "**Copyrights**") and a 50% interest in the money generated by the protection of these  
18 Copyrights (the "**Copyright Protection Efforts**"); or (3) advanced to a law firm to clear title to  
19 certain real property owned by Defendants. In all, Plaintiffs have loaned, invested, or advanced  
20 nearly \$3 million to, or on behalf of, Defendants.

21 2. On information and belief, during this same time period, Malibu Media, a  
22 subscription-based adult entertainment company, has made and continues to make money: (a) from  
23 the use, license, and/or sale of its Copyrights; and (b) from its Copyright Protection Efforts, including  
24 the filing of hundreds of copyright infringement lawsuits per month.

25 3. However, on information and belief, Defendants' high-end lifestyle has begun to  
26 outstrip their business income. Defendants have defaulted on the two promissory notes and have not  
27 re-paid to Genova Capital the legal fees and costs they advanced on behalf of the Defendants.  
28 Defendants also have not paid to Warmblood 50% of the money that has been generated from the

1 use, license, and/or sale of the Copyrights, nor have Defendants paid to Warmblood 50% of the net  
2 recoveries on the Copyright Protection Efforts.

3 4. Genova Capital is currently pursuing non-judicial foreclosure of the promissory notes.  
4 The remaining advanced moneys and moneys owed to Warmblood on the use, sale, and license of the  
5 Copyrights and on the Copyright Protection Efforts are the subject of this lawsuit.

## 6 **II. PARTIES**

7 5. Plaintiff Genova Capital, Inc. ("**Genova Capital**") is, and at all times relevant to this  
8 suit was, a California corporation located and doing business in the County of Orange. Genova  
9 Capital is a real estate business. Joshua Hunter and Robert Cook are both officers of Genova Capital.

10 6. Plaintiff Warmblood, Inc. ("**Warmblood**") is, and at all times relevant to this suit was,  
11 a California corporation located and doing business in the County of Orange. Warmblood is a  
12 business that provides consulting services. Messrs. Hunter and Cook are both officers of  
13 Warmblood.

14 7. On information and belief, Defendant Colette Pelissier aka Colette Pelissier Field  
15 ("**Pelissier**") is, and at all times relevant to this suit was, an individual who resides in the County of  
16 Ventura in the State of California.

17 8. On information and belief, Defendant Brigham Field ("**Field**") is, and at all times  
18 relevant to this suit was, an individual who resides in the county of Ventura in the State of California.

19 9. On information and belief, Defendants Pelissier and Field are a couple who married in  
20 2011.

21 10. On information and belief, Defendant Malibu Media, LLC ("**Malibu Media**") is a  
22 California limited liability company located and doing business in the County of Los Angeles.  
23 According to the California Secretary of State website, Malibu Media is a "Production company"  
24 business, Defendant Colette Pelissier is its sole manager and agent for service of process, its current  
25 business address is 30700 Russell Ranch Road, Suite 250, Westlake Village, CA 91362, and its  
26 previous business address was 9701 Wilshire Blvd., 10th Floor, Beverly Hills, CA 90212. Also, on  
27 information and belief, Malibu Media is an adult entertainment company which owns and operates  
28 the website "X-art.com."

1           11. On information and belief, Defendant Click Here LLC ("**Click Here**") is a limited  
2 liability company located and doing business in the County of Los Angeles. According to the  
3 California Secretary of State website, Click Here is a "Real Estate Holdings" business, Field is its  
4 sole manager and agent for service of process, and its business address is 32356 Mulholland Hwy.,  
5 Malibu, CA 90265. On information and belief, Click Here was initially registered on January 27,  
6 2012, previously had two managers (Field and Pelissier), and at one point was the holdings company  
7 for Malibu Media's intellectual property.

8           12. On information and belief, Defendant Colette Holdings, LLC ("**Colette Holdings**") is  
9 a limited liability company located and doing business in the County of Los Angeles. According to  
10 the California Secretary of State website, Colette Holdings is a "Holdings Company" business,  
11 Pelissier is its sole manager and agent for service of process, and its business address is 9701  
12 Wilshire Blvd., 10th Floor, Beverly Hills, CA 90212. On information and belief, Colette Holdings  
13 was initially registered on November 4, 2015.

14           13. On information and belief, Defendant Colette Properties, LLC ("**Colette Properties**")  
15 is a limited liability company located and doing business in the County of Los Angeles. According to  
16 the California Secretary of State website, Colette Properties is a "Real Estate Holdings" business,  
17 Pelissier is its sole manager and agent for service of process, and its business address is 9701  
18 Wilshire Blvd., 10th Floor, Beverly Hills, CA 90212. On information and belief, Colette Properties  
19 was initially registered on October 30, 2015.

20           14. On information and belief, Defendant Colette Production, Inc. ("**Colette Production,**  
21 **Inc.**") is a California corporation located and doing business in the County of Los Angeles.  
22 According to the California Secretary of State website, Colette Production is a "Movie Production"  
23 business, Pelissier is its CEO, Secretary, CFO, and agent for service of process, and its business  
24 address is 9701 Wilshire Blvd., 10<sup>th</sup> Floor, Beverly Hills, CA 90212. On information and belief,  
25 Colette Production was initially registered on November 4, 2015.

26           15. On information and belief, Defendant Colette Productions LLC ("**Colette**  
27 **Productions LLC**") is a business of unknown form, with its principal place of business and doing  
28 business in the County of Los Angeles, with a business address of 32356 Mulholland Hwy., Malibu,

1 CA 90265.

2 16. On information and belief, Defendant Zo Digital, LLC ("**Zo Digital**") is a California  
3 limited liability company located and doing business in the County of Los Angeles. According to the  
4 California Secretary of State website, Zo Digital has one unnamed manager, Field is its agent for  
5 service of process, and its business address is 32356 Mulholland Hwy., Malibu, CA 90265. The  
6 Articles of Organization of a Limited Liability Company (LLC) on file with the California Secretary  
7 of State does not identify the type of business that Zo Digital is engaged in. On information and  
8 belief, Zo Digital was initially registered on March 3, 2017.

9 17. On information and belief, non-party Pillar Law Group APLC (the "**Pillar Law**  
10 **Group**"), a California law firm, spearheaded the Copyright Protection Efforts on behalf of Malibu  
11 Media between 2012 and late 2017, or for some timeframe in between.

12 18. On information and belief, non-party Lorri Lomnitzer is a Florida-barred attorney who  
13 works at The Lomnitzer Law Firm, P.A. ("**Lomnitzer Law**"). On information and belief, Ms.  
14 Lomnitzer and Lomnitzer Law are currently spearheading the Copyright Protection Efforts on behalf  
15 of Malibu Media, and have been doing so since late 2017.

16 19. On information and belief, non-party Joseph DeCotiis is a New Jersey-barred attorney  
17 who is the Managing Partner of the law firm of DeCotiis, Fitzpatrick, Cole & Gibling, LLP ("**DeCotiis**  
18 **Fitzpatrick**"). On information and belief, Mr. DeCotiis connected Ms. Lomnitzer and Lomnitzer  
19 Law with Malibu Media. Also, on information and belief, Mr. DeCotiis and/or DeCotiis Fitzpatrick  
20 either receives a percentage of the profits from the Copyright Protection Efforts or a monthly fee  
21 from Ms. Lomnitzer and/or Lomnitzer Law for Mr. DeCotiis's role in establishing the relationship  
22 with Malibu Media.

23 20. Plaintiffs are ignorant of the true names and capacities of defendants sued herein as  
24 DOES 1 through 25, inclusive, and therefore sue those defendants by fictitious names. Plaintiffs will  
25 amend this Complaint to allege their true names and capacities once ascertained. Plaintiffs are  
26 informed and believe, and on that basis allege, that each of the fictitiously named defendants is  
27 legally responsible in some manner for the actions herein alleged and that Plaintiffs' damages were  
28 proximately caused by their conduct.

1           21. On information and belief, all defendants, including DOES 1 through 25, were the  
2 agents and alter egos of each other and in doing the things alleged in this Complaint, were acting  
3 within the course and scope of such agency and with the permission and consent of the other  
4 defendants. Each reference in this Complaint to defendants, any defendant, and/or specifically  
5 named defendants includes a reference to all defendants sued by their fictitious names. In doing the  
6 things alleged in this Complaint, each defendant was acting with a unity of interest as to each other  
7 defendant. Recognizing the separateness of any of the defendants would effectuate an injustice.

### 8                           **III. JURISDICTION AND VENUE**

9           22. The Superior Court of California for the County of Los Angeles has jurisdiction over  
10 this matter because all Defendants reside or do regular business within Los Angeles County,  
11 California.

12           23. This Court is the proper venue because all Defendants reside or do regular business  
13 within Los Angeles County, California. Also, on information and belief, the agreements at issue  
14 were entered into on Defendants' side in Los Angeles County, California and are currently being  
15 breached on Defendants' side in Los Angeles County, California.

16           24. The relief sought by Plaintiffs falls within the unlimited jurisdiction of this Court.

### 17                           **IV. GENERAL ALLEGATIONS**

18           25. Defendants owe Genova Capital over \$2.89 million on two promissory notes.

19           26. The first promissory note is for \$2.5 million, and was executed on November 28,  
20 2016, by Pelissier and Field, in favor of Genova Capital. It is secured by a deed of trust on the  
21 property located at 11802 Ellice Street, Malibu, California, 90265 (the "11802 Ellice Home"), which,  
22 on information and belief, is owned by Pelissier and Field. On information and belief, Defendants  
23 needed the \$2.5 million so that they could pay an already-existing loan to a third party that was, at  
24 that point in time, coming due. Between February 2017 and January 2019, checks from a variety of  
25 bank accounts that, on information and belief, belong to Field, Pelissier, Colette Production, Inc.,  
26 Colette Productions LLC, Colette Properties, and/or Zo Digital were issued as payments on this \$2.5  
27 million note. This first promissory note came due on January 1, 2018. Pelissier and Field are in  
28 default of this \$2.5 million note, the total due as of March 2019, with interest, was at least

1 \$2,744,206.67, and Genova Capital is pursuing non-judicial foreclosure of this note.

2 27. The second promissory note is for \$125,000, and was executed on April 11, 2017, by  
3 Pelissier and Field, in favor of Genova Capital. This note is also secured by a deed of trust on the  
4 11802 Ellice Home. On information and belief, Defendants needed this \$125,000 to re-pay a loan  
5 that had been taken out by Pelissier and/or Malibu Media from a company called "Everest." Also, on  
6 information and belief, Pelissier and Field gave the \$125,000 they borrowed from Genova Capital to  
7 Everest so that Pelissier could gain (or re-gain) control of Malibu Media. No payments have been  
8 made towards this \$125,000 note, and the \$125,000 note came due on June 30, 2017. Pelissier and  
9 Field are in default of this note, the total due as of March 2019, with interest, was at least  
10 \$146,198.62, and Genova Capital is pursuing non-judicial foreclosure of this note.

11 28. As for the remaining money that Defendants owe to Plaintiffs (including the advanced  
12 moneys and the moneys owed relating to Malibu Media's Copyrights and Copyright Protection  
13 Efforts), those amounts are the subject of this lawsuit.

14 **Genova Capital Advances Legal Fees and Costs to Help Pelissier, Field, and Colette Properties**  
15 **Save Their Interest in Certain Real Property.**

16 29. In or around July 2017, Pelissier and Field requested Genova Capital's assistance with  
17 a dispute regarding the ownership of certain real property commonly known as 11824 Ellice Street,  
18 Malibu, California, 90265 ("11824 Ellice Property") (located next to the 11802 Ellice Home).  
19 Pelissier and Field told Genova Capital that they believed title to the 11824 Ellice Property vested  
20 solely in Colette Properties.

21 30. Genova Capital introduced Pelissier and Field to the law firm of Michelman &  
22 Robinson, LP ("Michelman & Robinson"). Genova Capital agreed to advance legal fees and costs  
23 to the law firm on behalf of Defendants, who in turn agreed to re-pay Genova Capital for whatever  
24 funds it advanced.

25 31. In August 2017, Michelman & Robinson filed a Complaint against certain defendants  
26 to, among other things, quiet title to the 11824 Ellice Property. On information and belief, the case  
27 was resolved in favor of Pelissier, Field, and Colette Properties.

28 32. On or about December 12, 2017, Genova Capital paid to Michelman & Robinson

1 \$7,132.00 for their legal work on the matter.

2 33. Genova Capital has made multiple demands on Pelissier, Field, and Colette Properties  
3 regarding this outstanding debt, but to date, Defendants have not paid to Genova Capital this  
4 \$7,132.00, even though they have reiterated their promise to do so on many occasions, including as  
5 recently as March 2019.

6 **Warmblood Invests \$400,000 in Malibu Media in Exchange for a 50% Interest in Malibu**  
7 **Media's Copyrights and Copyright Protection Efforts.**

8 34. On information and belief, in late 2018, Malibu Media was in need of a capital  
9 infusion to continue its Copyright Protection Efforts. Pelissier sought financial help from  
10 Warmblood on behalf of Malibu Media.

11 35. On December 13, 2018, Warmblood and Malibu Media executed the Consulting  
12 Agreement, which is attached to this Complaint as Exhibit A. Pursuant to the Consulting Agreement,  
13 its effective date is November 30, 2018. (Exh. A, Opening Paragraph.)

14 36. Pursuant to Paragraph A of the "Recitals" and Paragraph 3 of the "Agreement" portion  
15 of the Consulting Agreement, Warmblood agreed to: (1) provide, as requested, certain services  
16 associated with the Copyright Protection Efforts, including financial forecasting, budgeting,  
17 reporting, administration and consulting of finances and financing, and business consulting services;  
18 and (2) invest and provide a capital contribution of \$400,000 to Malibu Media (collectively referred  
19 to in the Consulting Agreement as "Services").

20 37. In exchange for the Services, Malibu Media agreed to split 50-50 its "net recoveries  
21 generated from protecting the copyrights through restitution efforts to recover losses" with  
22 Warmblood. (Ex. A, ¶ 2(B)(3).) The parties also agreed that "[a]ll Collections shall be deposited  
23 into JP Morgan Chase Bank account number 159066528." (*Id.*)

24 38. Also, in exchange for the Services, Malibu Media agreed to "deliver accounting to  
25 Warmblood prior to each months net profit disbursement, or at the request of Warmblood." (Ex. A, ¶  
26 2(B)(7).)

27 39. Also, and specifically "in exchange for Warmblood's \$400,000 capital contribution,"  
28 Malibu Media transferred to Warmblood not only the 50% interest in the Copyright Protection



1 Efforts, but also a 50% interest in Malibu Media's Copyrights. (Ex. A, ¶ 3(A)(1).) Warmblood's  
2 receipt of a 50% interest in Malibu Media's Copyrights was a key term of the Consulting Agreement,  
3 and Warmblood would not have entered into the contract without receiving that 50% ownership  
4 interest.

5 40. On information and belief, between 2012 and late 2017, or for some time frame in  
6 between, Pillar Law Group APLC spearheaded Malibu Media's Copyright Protection Efforts.

7 41. On information and belief, Attorney Lomnitzer and Lomnitzer Law is currently  
8 spearheading the Copyright Protection Efforts and have been doing so since late 2017, when they  
9 took over for Pillar Law Group APLC.

10 42. On information and belief, Attorney DeCotiis of DeCotiis Fitzpatrick connected Ms.  
11 Lomnitzer and Lomnitzer Law with Malibu Media. Also, on information and belief, Mr. DeCotiis  
12 and/or DeCotiis Fitzpatrick either receives a percentage of the profits from the Copyright Protection  
13 Efforts or a monthly fee from Ms. Lomnitzer and/or Lomnitzer Law for Mr. DeCotiis's role in  
14 establishing the relationship between Ms. Lomnitzer, Lomnitzer Law, and Malibu Media.

15 43. On information and belief, between 2012 and 2018, the Copyright Protection Efforts  
16 generated over \$26.5 million. On information and belief, in 2018 alone, the Copyright Protection  
17 Efforts generated over \$2.8 million.

18 44. On information and belief, since the execution of the Consulting Agreement, the  
19 Copyright Protection Efforts have continued, and Defendants have received funds from that effort,  
20 50% of which belongs to Warmblood.

21 45. To date, however, not a single cent has been deposited in the JP Morgan Chase  
22 Account, nor has Warmblood otherwise received any money from the Copyright Protection Efforts.  
23 Additionally, Warmblood has not received any money generated from the use, license, and/or sale of  
24 Malibu Media's Copyrights.

25 46. Warmblood has made multiple requests to Pelissier, Field, and Malibu Media for an  
26 accounting of the Copyright Protection Efforts and the use, license, and/or sales of the Copyrights,  
27 including as recently as March 2019. To date, Defendants have failed to provide such accounting to  
28 Warmblood.

1 **Additional Information on Defendants' Alter Egos**

2 47. On information and belief, Pelissier and Field started Malibu Media together in 2009,  
3 but did not register the business as a limited liability company with the California Secretary of State  
4 until 2011.

5 48. On information and belief, Malibu Media runs the subscription-based erotica website  
6 "X-art.com." On information and belief, at all times relevant herein, Pelissier operated the business  
7 primarily from the homes she had shared with Field, and at various points in time, Field has had a  
8 prominent role in the business, including initially being a manager and also the sole agent for service  
9 of process for the company.

10 49. On information and belief, starting in approximately 2012, Malibu Media has initiated  
11 copyright lawsuits on a nation-wide basis against people they accused of stealing films from the  
12 Internet. On information and belief, in 2014 alone, Malibu Media filed more than thirteen hundred  
13 copyright-infringement lawsuits in the United States.

14 50. On information and belief, Plaintiffs allege that Defendants have done the following  
15 acts which reveal the interconnected unity of interests between Malibu Media and Defendants:

- 16 • Defendant Pelissier used her Malibu Media business email to negotiate her personal  
17 loan terms with Genova Capital;
- 18 • Defendant Pelissier used her personal email(s) to negotiate Malibu Media's  
19 Consulting Agreement with Warmblood;
- 20 • Defendant Pelissier runs Malibu Media in large part from the home she currently  
21 shares with Field, the 11802 Ellice Home, and that she has, in the past, run Malibu  
22 Media from the homes she has previously shared with Field;
- 23 • Defendant Pelissier intermingled the funds she received from Genova Capital and  
24 Warmblood with her personal matters and her business (e.g., the \$125,000 personal  
25 loan described in detail in Paragraph 27, supra, was used to, on information and belief,  
26 pay off a loan taken out by, or for the benefit of, Malibu Media, such that Pelissier  
27 could gain (or re-gain) control of Malibu Media);

- Checks were issued as payments toward the \$2.5 million personal promissory note from a variety of bank accounts that, on information and belief, belong to Field, Pelissier, Colette Production, Inc., Colette Productions LLC, Colette Properties, and/or Zo Digital.

51. On information and belief, Defendant Field is the owner of alter ego shell entities Click Here and Zo Digital, both of which have no business purpose except to improperly shield assets from creditors. According to the California Secretary of State website, both of these entities share the same Mulholland business address, and on information and belief, this Mulholland address is the address of a home that Pelissier and Field once lived in.

52. On information and belief, Defendant Pelissier is the owner of alter ego shell entities Colette Holding, Colette Properties, and/or Colette Production, Inc., all of which have no business purpose except to improperly shield assets from creditors. According to the California Secretary of State website, all of these entities have the same Wilshire Blvd. business address that Malibu Media once had.

53. On information and belief, Defendant Pelissier is the owner of alter ego shell entity Colette Productions LLC, which has no business purpose except to improperly shield assets from creditors, and whose business address is the same as Click Here and Zo Digital (see Paragraph 51, supra).

54. Even beyond the Defendants' shared contact information, management, and assets, the pure fact that many of the defendant entities are so similar in name to one another leads to the logical conclusion that these entities are carbon copies with a unity of interest in the same individual: Colette Pelissier.

55. On information and belief, Defendants are shuttling assets and interests out of Malibu Media and into more obscure entities, including the shell entity holding companies: Click Here, Colette Holdings, Colette Properties, Colette Production, Inc., Colette Productions LLC, and/or Zo Digital.

1 **FIRST CAUSE OF ACTION**

2 (Breach of Oral Contract)

3 (Against All Defendants)

4 56. Plaintiffs hereby refer to and incorporate by reference each and every allegation  
5 contained in the preceding paragraphs.

6 57. In or around July 2017, Defendants Pelissier, Field, and Colette Properties asked  
7 Plaintiff Genova Capital to advance legal fees and costs to Michelman & Robinson so that  
8 Defendants could protect their ownership interest in the 11824 Ellice Property, and Genova Capital  
9 agreed to do so in exchange for Defendants' agreement to re-pay the advanced funds.

10 58. On or about December 12, 2017, Genova Capital paid \$7,132.00 to Michelman &  
11 Robinson for the legal work they provided in the matter, including the preparation of the Complaint  
12 to quiet title to the 11824 Ellice Property.

13 59. Genova Capital has fulfilled its obligations under the contract.

14 60. In contrast, Defendants have failed to fulfill their obligations under the contract to pay  
15 to Genova Capital the \$7,132.00 that it advanced on behalf of Defendants.

16 61. Demand has been made on Defendants for full payment, but Defendants have failed  
17 and refused, and continue to fail and refuse, to pay the \$7,132.00 that is owed to Genova Capital.

18 62. As a direct and proximate result of Defendants' breaches, Genova Capital has been  
19 harmed by Defendants' breaches, and has suffered damages in a total sum to be established according  
20 to proof at trial but, when coupled with the additional funds owed by Defendants, is believed to be  
21 within the jurisdiction of this Court.

22 **SECOND CAUSE OF ACTION**

23 (Breach of Written Contract)

24 (Against All Defendants)

25 63. Plaintiffs hereby refer to and incorporate by reference each and every allegation  
26 contained in the preceding paragraphs.

27 64. On December 13, 2018, Plaintiff Warmblood and Defendant Malibu Media executed  
28 the Consulting Agreement.

1           65. Under the terms of the Consulting Agreement, Malibu Media agreed to give  
2 Warmblood a 50% interest in its Copyrights and Copyrights Protection Efforts. With regard to the  
3 latter, Malibu Media specifically agreed that Warmblood would have the right to a “monthly receipt  
4 of 50% of all net recoveries generated from protecting the copyrights through restitution efforts to  
5 recover losses.” (Consulting Agreement, ¶ 2(B)(3).) Malibu Media also agreed to provide  
6 Warmblood with an accounting “prior to each months net profit disbursement, or at the request of  
7 Warmblood.” (*Id.*)

8           66. Demand has been made on Defendants to pay to Warmblood 50% of the net  
9 recoveries that have been generated through the Copyright Protection Efforts since the effective date  
10 of the Consulting Agreement, including those spearheaded by Ms. Lomnitzer and Lomnitzer Law.

11           67. Demand has also been made on Defendants to pay to Warmblood 50% of the net  
12 profits on the use, license, and/or sale Malibu Media’s Copyrights.

13           68. Demand has also been made on Defendants to provide Warmblood with an accounting  
14 of the money generated by both the Copyright Protection Efforts and the use, license, and/or sale of  
15 the Copyrights.

16           69. Warmblood has fulfilled its obligations under the Consulting Agreement.

17           70. In contrast, Defendants have not fulfilled their obligations under the Consulting  
18 Agreement. Warmblood has not received a single cent from the Copyright Protection Efforts or from  
19 the use, license, and/or sale Copyrights. Nor, for that matter, has Warmblood been provided with an  
20 accounting.

21           71. As a direct and proximate result of Defendants’ breaches, Warmblood has been  
22 harmed and has suffered damages, in a sum to be established according to proof at trial but believed  
23 to be within the jurisdiction of this Court.

24           72. Pursuant to Paragraph 6 of the Consulting Agreement, Warmblood is entitled to its  
25 reasonable attorneys’ fees and costs should it be deemed the prevailing party in this action.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs pray for judgment against all Defendants as follows:

3 73. For general, compensatory, and consequential damages, which includes, but is not  
4 limited to: (a) the funds Genova Capital advanced to Michelman & Robinson on behalf of  
5 Defendants; (b) 50% of the net recoveries on Malibu Media's Copyright Protection Efforts; and (c)  
6 50% of the net profits on the use, license, and/or sale of Malibu Media's Copyrights, in a sum to be  
7 determined at trial, along with prejudgment and post-judgment interest thereon at the rate of 10% per  
8 annum.

9 74. For an accounting relating to Malibu Media's Copyright Protection Efforts, including  
10 those pursued by Ms. Lomnitzer and Lomnitzer Law;

11 75. For an accounting relating to the use, license, and/or sale of Malibu Media's  
12 Copyrights;

13 76. For costs of suit incurred herein, including reasonable attorneys' fees and legal  
14 expenses as permitted by law; and

15 77. For such other relief as the Court determines to be appropriate, equitable, and/or just.

16 DATED: August 12, 2019

17 AVISO LEGAL GROUP LLP  
18 LINDA D. LAM  
19 LORI GINEX-ORINION

20 By: /s/ Linda D. Lam

Linda D. Lam

21 Attorneys for Plaintiffs WARMBLOOD, INC., and  
22 GENOVA CAPITAL, INC.

UNFILED

EXHIBIT A

## **CONSULTING AGREEMENT**

This Consulting Agreement ("Agreement") is made and entered into by and between Warmblood, Inc. ("Warmblood"), on one hand, and Malibu Media, LLC (collectively, "Malibu"), on the other hand. Hereafter, Warmblood and Malibu shall sometimes be collectively referred to herein as the "Parties". This Agreement is dated November 30, 2018 (the "Effective Date") and is entered into with reference to the following facts:

### **RECITALS**

A. Whereas, Warmblood, through its members has provided, is providing, and/or will continue to provide, to Malibu the following services, which include but are not limited to:

- (1) Financial forecasting
- (2) Budgeting
- (3) Reporting
- (4) Administration and consulting of finances and financing
- (5) Business consulting services
- (6) Provide an investment in the amount of \$400,000 in exchange for a consulting fee described in item 2 B(3) of the Agreement

B. Whereas, Malibu desires to retain attorneys to litigate with Malibu as plaintiff, to prosecute, settle and/or enforce Malibu's rights to protect its copyrighted materials as prescribed by law hereafter referred to as "COPYRIGHT RIGHTS." The restitution through enforcement and protection of Copyright materials owned by Malibu Media, LLC" and other intellectual property infringement claims or causes of action herein shall be known for the purpose of this agreement as the "COPYRIGHT PROTECTION."

C. Whereas, in consideration for providing the Services, Malibu wishes to compensate Warmblood through a monthly payment of 50% of net recoveries, based upon the following terms and conditions set forth herein.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual covenants and warranties as set forth herein, the Parties agree as follows:

#### **1. Incorporation of Recitals.**

The Recitals set forth in paragraphs A through C above are true and correct and incorporated herein by this reference as though fully set forth.



2. Performance by the Parties.

A. Performance by Warmblood:

(1) Warmblood shall execute and deliver a duplicate counterpart original of this Agreement to Malibu.

(2) Warmblood shall keep the terms of this agreement confidential and not disclose any of the terms to other non-parties.

(3) Warmblood shall deliver accounting to Malibu at the time of each disbursement, or at the request of Malibu.

B. Performance by Malibu:

(1) Malibu shall execute and deliver a duplicate counterpart original of this Agreement to Warmblood.

(2) Malibu shall keep the terms of this agreement confidential and not disclose any of the terms to other non-parties.

(3) Malibu hereby agrees that both Malibu and Warmblood shall each have a right to a monthly receipt of 50% of all net recoveries generated from protecting the copyrights through restitution efforts to recover losses. All Collections shall be deposited into JP Morgan Chase Bank account number 159066528. Any amounts dispersed in 50% increments to Malibu and Warmblood shall be withdrawn mutually and at the same time.

(4) Malibu grants the following individuals (Brad Cook, Joshua Hunter, Tyler Cook) authority to act on behalf of Malibu in relation to its efforts to protect Malibu's copyrights. All hiring and firing of employees, which includes attorneys and local counsel, must be mutually agreed upon by Malibu and Warmblood.

(5) Malibu shall indemnify and hold harmless Warmblood and Brad Cook, Joshua Hunter and Tyler Cook from any litigation and/or damages.

(6) Malibu agrees that it will maintain its controlling interest in Malibu with a minimum of 51% interest and will not sell or transfer any portion of its ownership without prior written consent of Warmblood.

(7) Malibu shall deliver accounting to Warmblood prior to each months net profit disbursement, or at the request of Warmblood.

3. Capital Contributions

A. \$400,000 paid by Warmblood

(1) In exchange for Warmblood's capital contribution, Warmblood shall receive a 50% interest in Malibu's COPYRIGHT RIGHTS and COPYRIGHT PROTECTION efforts.

4. Governing Law.

This Agreement shall be construed and interpreted according to the laws of the State of California.

5. Binding on Successors.

This Agreement is and shall be binding upon and shall inure to the benefit of the predecessors, successors, subsidiaries, affiliates, representatives, assigns, directors, partners, co-owners, officers, agents, attorneys and employees of each of the Parties hereto, and their heirs, attorneys, and assigns.

6. Attorneys' Fees.

Should any party hereto commence or maintain any action at law or in equity including, but not limited to, administrative or alternative dispute resolution against any other party hereto by reason of the breach or claimed breach of any term or provision of this Agreement, the prevailing party in said action shall be entitled to recover court costs which include, without limitation, reasonable attorneys' fees.

7. Entire Agreement.

This Agreement constitutes the entire agreement between the Parties with regard to those matters listed in the Recitals above and settlement thereof, there being no oral, collateral, or supplemental agreements concerning the subject matter hereof. No party is entering into this Agreement based on any representation or statement from any other party to this Agreement or any third party that is not specifically set forth in writing in this Agreement. All Parties acknowledge that they are entering into this Agreement of their own voluntary will and without any duress. This Agreement may not be altered, amended, modified, or otherwise changed in any respect or particular as to any party except by a writing duly executed by each party affected thereby. Each party has been informed to seek the advice of separate and independent legal counsel from the counsel that prepared this Agreement and each party understands that they have the right and ability to do so prior to and after signing this Agreement.

8. Counterparts and Facsimile or Electronic Transmission.

This Agreement may be executed in two or more counterparts, each counterpart being executed by fewer than all of the Parties hereto and shall be equally effective as if a single original had been signed by all Parties; but all such counterparts shall be deemed to constitute a single agreement. Signatures transmitted by mail, telecopier or electronic transmission shall be effective as original signatures.

9. Authorization.

The Parties each warrant and represent to the others that each has full and complete authority and right to execute this Agreement and such execution shall constitute a full and final resolution of all differences, allegations and claims described in the Agreement.

10. Performance of Further Acts.

Each of the Parties hereto shall execute and deliver all documents and perform all acts reasonably necessary to effectuate the provisions of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

**"Malibu"**

**MALIBU MEDIA, LLC**

Date: 12-13-2018

By: 


Name: Colette Pelissier

Title: Manager

**"Warmblood"**

**Warmblood, Inc.**

Date: 12-13-2018

By: 

Name: Brad Cook

Title: Manager